* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.REV.P. 194/2007

Reserved on : July 05,2007
Decided on : July 16, 2007

MANOJ KUMAR & ORS ..... Petitioner
Through Mr. V. K.Shali, Advocate

versus

THE STATE(NCT OF DELHI) ..... Respondent
Through Mr. Pawan Sharma, APP for State

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat:

1. The present Revision petition has been preferred against the order dated 3.1.2007 of the learned Additional Sessions Judge (hereafter "the trial court"). The Petitioners were charged under section 420/468/471/120B/201 of Indian Penal Code and under section 13(1)(d) of the Prevention of Corruption Act

2. The brief facts necessary to decide this petition are as follows. The accused persons i.e. Ghanshyam Das was the Zonal Employment officer, Nangloi, Delhi. Praveen Kumar Gupta was a Lower Division Clerk. Pradeep kumar and Kartar singh were the peons working in the employment exchange. The 17 petitioners were allegedly

referred by accused Ghanshyam Das for employment after obtaining illegal gratification. The names of the Petitioners were allegedly forwarded to the personal officer of the Ordnance Depot, Shakur Basti for being appointed as "Mazdoors".

3. It was alleged, in the charge sheet filed by the prosecution that an X-1 card of every candidate is prepared at the Employment Exchange at the time of registration of a person for the purpose of employment assistance; the entries are made in the main register, X-63. The X-1 card is matched with the candidate against the notified vacancies according to seniority and eligibility. This card plays an important role in matching and sponsoring of the candidate.

4. The Ordnance Depot, by its letter dated 18th February 1997 sent a list of 31 candidates(23 of the general category and 8 of OBC category) selected for the post of Mazdoor for verification to the Director of Employment. It was allegedly revealed at this point that out of these 31 candidates, 20 in the General category and 2 in the OBC category were bogus. Accordingly, on 23.9.97, a complaint in this regard was made by Sh. A.S. Khullar, the then Joint Director (Employment). It was allegedly found during investigation that the X-1 cards of 18 accused, including the 17 petitioners were missing from the employment office whereas their names were substituted in the register. The candidature of these persons was considered as bogus.

5. Shri Khullar had conducted an inquiry into the matter on 28.8.1997 and allegedly the co-accused Ghanshyam Das confessed, in the presence of two office employees that accused Kartar Singh had collected illegal gratification of Rs. 40,000/- from the bogus

selected candidates for illegally sponsoring their names . It was alleged that Rs.15,000/- was retained by him and Rs. 10,000/- was taken by Co-accused Praveen Kumar. Kartar Singh kept Rs. 10,000/- with him and the balance of Rs. 5,000/- was kept by Pradeep kumar.

6. The trial court charged the petitioners under Section 420/468/471/120B/201 IPC; the co-accused were also charged under the said provisions. The extracts of the order dated 3.1.2007 are as follows;

> *" In the light of the legal position highlighted as above. I find that at this stage only a prime facie case has to be made out and even strong suspicion is sufficient to frame the charge and the judgments relied upon by the accused persons have got no applicability at this stage as sifting of evidence is permissible for limited purpose of finding out if a prima facie case is made out or not. Prima facie extra judicial confession of accused Ghanshyam das spelling out the role of his co-accused coupled with the fact that the reasons given in the charge sheet for candidature of selected candidates being bogus and of missing of x-1 cards of the beneficiary accused no.5 to 22 and of their being no entry in the renewal register of their names offer being lapsed and of changed pages in the main register speaks volume of criminal conspiracy inter se the accused persons to manipulate the records to cause wrongful loss of charge and undue gain to themselves in sufficient to call upon the accused persons to face trial in this case as there cannot be direct evidence of criminal conspiracy and admittedly accused Ghanshyam Das had retired when the challan was filed against him and so prima facie there being not any legal requirement of prior sanction for his prosecution. It is settled law that act or action of one of the accused cannot be used as evidence against another but section10 of evidence act carves out on exception to this law in case of conspiracy and so it cannot be said that no case is made out against the beneficiary accused no.5 to 22 because they have been employment as labourers in ordnance Depot in pursuance to the directions passed CWP No.2513/97 as the complainant or the employment exchange was not party to the said writ petition one for this reason could not be brought to the notice of the Hon'ble High Court the names of the beneficiary accused no.5 to 22 were not duly registered with the employment exchange and their registration was bogus… ……..I find that a prima facie case is made out u/s 420/468/471/120-b/201 IPC against accused.''*

7. Mr. V.K. Shali, learned counsel, contended that the framing of charge is an outcome of relying on the extra-judicial confession purported to have been made by Ghanshyam Das. The Learned Counsel submitted that the said extra-judicial confession is hit by Sec.164 of the Code of Criminal Procedure, which lays down as to how confession of an accused is to be recorded.

8. The learned Counsel has further submitted that the extrajudicial confession made by the accused Ghanshyam Das was recorded by one SI, the investigating officer of the case. This confession is again hit by Section25 of the Indian Evidence Act. The section provides that confession made to a police officer is inadmissible.

9. The Learned Counsel urged that the complainant alleged that validity of X-1 of most of the candidates had lapsed. Counsel argued that merely because some entries in the register, in the employment exchange were missing, there could be no presumption against the Petitioners. The counsel submitted that the Petitioners had no access to the registers; they were in the custody of officials of the Employment Exchange. The counsel has also urged that there was no witness to suggest that any illegal gratification was given to any person. The learned Counsel submits that there is no recovery of any amount, which is an important ingredient to connect the accused with the accusation. The learned counsel also questioned the applicability of Section 10 of the Indian Evidence Act. He contended that there was no evidence to prove conspiracy. The counsel contended that this court had occasion to consider the facts when after the selection process, the Ordinance Depot did not issue the appointment letters. At that stage, the

Division Bench held that the refusal to appoint the Petitioners was unjustified; it directed their appointment. In these circumstances, the petitioner's employment was a consequence of this court's directions. The appointments have not ceased, nor have they been cancelled. The framing of charges would lead to untold harassment.

10. Learned counsel submitted that the lapsing of the petitioners' registration was a technicality, which could not vitiate their appointments, since they were admittedly eligible according to norms and had been found suitable by the Ordnance depot, the employer, who selected them.

11. The petition was opposed by the learned Additional Public Prosecutor, who urged that the statement of Ghanshyam, the co-accused, who facilitated commission of the offence, was not recorded in extrajudicial proceedings; it was during an enquiry held by the Employment Exchange. Besides, that statement was witnessed by two other co-employees; they corroborated it, in their statements during the criminal investigation. As such the question of applicability of Seciton 25 of the Evidence Act, or Section 164, Cr. PC did not arise. Learned counsel urged that the totality of circumstances showed that the petitioners were beneficiaries of the criminality perpetrated by the co-accused, for illegal gratification. They were ineligible and had induced the employer, through false representations, as well as connivance in getting fabricated documents placed on the Employment Exchange records, to secure jobs. Such jobs would have been given to others who were eligible and entitled to it, but for the acts of the petitioners and co-accused.

12. The factual matrix is that the petitioners, on the basis of recommendations of the Employment Exchange, secured employment as Mazdoors in the Ordnance Depot. The Exchange held an inquiry into allegations of irregularities; it was discovered that X-1 cards had been substituted. Other records were allegedly tampered. The petitioners were beneficiaries. They were otherwise ineligible for appointment, since their registration with the Exchange had lapsed. On this aspect, as to eligibility, I am unpersuaded by the submission of the petitioners. The object of requiring employers to recruit from amongst candidates registered with the Employment Exchanges is to give fairness to the recruitment system. If the law provides that registration has to be renewed, as a precondition to forwarding of names to concerned employers, that is a substantive requirement, since its non-compliance and the forwarding of names of unregistered candidates or of those whose names have lapsed would then acquire advantage over those who follow the law, by continuing their registration, or renew it. This would result in denial of appointment to those who are eligible. Likewise, the order of the Division Bench, in my considered opinion, cannot preclude investigation and trial into offences where the behaviour of accused warrants that approach.

13. The probative value of extra-judicial confessions of a co-accused has to be tested by the court, in the trial. The Supreme Court, in *Thimma vs- State of Mysore* AIR 1971 SC 1871 held that an unambiguous confession, if admissible in evidence and free from suspicion suggesting its falsity is a valuable piece of evidence which possesses a high probative force because it emanates directly from the person committing the offence. But in the process of proof of an alleged confession the court has to be satisfied that it is

voluntary, does not appear to be the result of inducement, threat or promise as contemplated by Section 24 of the Indian Evidence Act and the surrounding circumstances do not indicate that it was inspired by some improper or collateral consideration suggestive of its being untrue. Subsequent decisions have endorsed that view. Such admissions are evidence and constitute relevant circumstances, in view of Section 10 of the Indian Evidence Act.

14. In *State of Bihar v. Ramesh Singh* 1977 (4) SCC 39 and *Union of India V. P.K.Sen and Anr.* AIR 1979 SC 366 was held that at the stage of framing a charge, a strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged,may justify the framing of charge against the accused in respect of the commission of that offence.The court need not meticulously scan the evidence, as such an exercise would result in a mini-trial, which is not provided by law. Conversely,if the trial court finds that the materials do lead to suspicion,but not of such degree as to be called "grave" it need not frame the charges. The path to be trodden by the court is often narrow; it is always subjective to the facts of the case.

15. This court today is not concerned with the admissibility or otherwise of the statement of Ghanshyam. In fact, the circumstances of his statements, as well as their contents, have been spoken about by the witnesses who heard him. They have recorded statements during investigation. If one takes these into consideration, as well as the other features, such as the ineligibility of the petitioners, due to their names having been

recommended despite expiry of their registration, with the Employment, there is sufficient material, *prima facie,* to say that there exists grave suspicion about their involvement in commission of the offences in question. The petitioners, admittedly, were beneficiaries. Their involvement as conspirators, is to be established in the trial.

16. The result of the above discussion is that the petition has to fail. The impugned order is unexceptionable; it is hereby affirmed. The petition is accordingly dismissed, without any order as to costs.

16th July, 2007 S. RAVINDRA BHAT, J